

SECURITIES COMMISSION OF THE BAHAMAS

POLICY STATEMENT ON INTERIM TREATMENT OF MASTER / FEEDER FUND STRUCTURES

The Securities Commission of The Bahamas (“the Commission”) has responsibility for the licensing, regulation and supervision of persons operating in or from The Bahamas pursuant to the Securities Industry Act, 1999 and the Investment Funds Act, 2003. Additionally, the Commission is mandated inter alia to formulate principles to regulate and govern investment funds, securities and capital markets, as well as to maintain surveillance over investment funds, securities and capital markets to ensure orderly, fair and equitable dealings.

All licensees and registrants of the Commission are expected to adhere to the Commission’s licensing, operation and prudential requirements and ongoing supervisory programs. Licensees and registrants are expected to conduct their affairs in conformity with all other Bahamian legal requirements.

The Commission in collaboration with industry participants seeks to promote and encourage the maintenance of high standards of conduct and management in the provision of services in the investment funds, securities and capital markets. To this end the Commission may from time to time issue various policy statements.

The following statement addresses specific queries forwarded to the Commission from the Industry regarding its policies relating to the registration/licensing of Master/Feeder fund structures in this jurisdiction. At present there are no definitive procedures in place which define how these structures are addressed. To date it has been the approach of the Commission that unless otherwise exempted, all funds in a Master/Feeder fund structure would be required to be licensed individually. The Commission has however undertaken to review the various concerns raised and formulate positions based on local and international trends and needs as they relate to these structures.

To address the immediate concerns of the industry, the Commission has recently rendered certain approvals relating to various Master/Feeder structures of investment funds. The Commission notes that the decisions made to date were not approved as a precedent for such applications, and that future approvals would be granted on a case by case basis until such time as formal guidelines/rules have been established to regulate this structure of funds. It was thought that the approach taken in addressing these structures was useful and in cases where it has been applied the concerns of the applicant and their client have been addressed.

The Commission therefore provides the outline below as an interim statement of its position as it relates to how such Master Feeder structures **may** be addressed.

- 1) The Master Fund may be a closed or open-end fund.
- 2) The Offshore Feeder Fund is structured in such a way as to make it a Bahamas-Based fund and therefore regulated in The Bahamas.

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- 3) The Onshore Feeder fund is incorporated and operates as an unlicensed/unregistered investment vehicle. This fund is structured in such a way as to make it a Bahamas-based fund and therefore subject to regulation by the Commission. It is a mirror of the offshore fund which is regulated thus the regulation of the whole structure, in the Commission's opinion, falls to the primary off-shore jurisdiction. An application to have the onshore fund registered as a RFF is submitted to the Commission. This application is made on the basis that to require the fund to be fully licensed would mean over regulating the structure, which could result in loss of business to the jurisdiction as a whole. It is noted that the onshore fund does not qualify to be registered as a RFF because it is not licensed or registered, or listed on a stock exchange in a prescribed jurisdiction.

Section 6(a) – (d) of the IFA states that:

“A recognized foreign fund shall not carry on or attempt to carry on business unless it has been registered with the Commission and it –

(a) is licensed or registered in a prescribed jurisdiction; or

(b) has submitted evidence of its listings on a prescribed securities exchange; and

(c) has submitted to the Commission, within thirty days of the beginning of its operation as a Bahamas-based investment fund the prescribed details of the investment fund; and

(d) the prescribed fees have been paid in respect of the investment fund.”

In these circumstances, the Commission is willing to consider using its authority under section 64 of the IFA to exempt, in the first instance, the Onshore Funds from the requirements to satisfy the definition of Recognized Foreign Funds in the Act, namely to be licensed or registered in the prescribed jurisdiction, or listed on a prescribed exchange.¹ Thus the Onshore Fund is able to submit application for registration as a Recognized Foreign Fund in The Bahamas. Secondly, where the Master Fund in the structure is open ended and Bahamas Based, the Commission would be prepared to treat this fund in the same manner as it does the Onshore Fund. I.e. the Master fund can be exempted from meeting the requirement of being licensed in The Bahamas and instead can submit to registration as an RFF without meeting the qualifying criteria of licensing, registration or listing as the case maybe. In circumstances where the Master Fund is an open ended Bahamas Based Fund the Commission would be prepared to consider exempting the fund from Licensing. In such circumstances, however the Commission

¹ Fund is required to be structured and operating in a prescribed jurisdiction although it need not be licensed or registered or listed on an exchange in that jurisdiction.

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will require that notice of the fund is provided to the Commission. I.e. Details regarding the incorporation and parties related to the fund.

If either the Master Fund or the Onshore Fund operates from a non-prescribed jurisdiction that fund will be required to be licensed in the Bahamas or provide sufficient basis to support it being exempted from the normal licensing or registration requirements in the IFA.

Section 64 (1)(a)-(b) of the IFA provides that:

“The Commission may if satisfied that to do so would not be prejudicial to the public interest, direct that all or any of the provisions of this Act or regulations shall;

(a) not apply; or

(b) apply subject to such modification as may be specified to any person or class of persons.”

In assessing the appropriateness of granting an exemption to the onshore fund in this situation the Commission noted the following:

- (i) The structure is primarily regulated in the jurisdiction of the offshore fund. In this regard, it is noted that it is imperative that the offshore jurisdiction is a prescribed jurisdiction;
- (ii) It is intended that the structure of the onshore fund will mirror the activity of the offshore fund which is regulated thereby minimizing risk;
- (iii) The onshore fund which is operating in a prescribed jurisdiction is legitimately exempt from licensing by that jurisdiction whose system is recognized by the IFA. Failure to recognize the fact that there is a legitimate exemption in that jurisdiction would contradict the recognition of the onshore jurisdiction as a prescribed jurisdiction under the IFA; and
- (iv) Although a lighter touch regulation is applied to RFFs, the registration of the onshore fund in The Bahamas ensures some level of regulatory oversight and submission to the jurisdiction.

**Hillary H. Deveaux
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